

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5628 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS AND LEGAL REPRESENTATIVES OF DECEASED

GHELABHAI NAGARJI DESAI & ANR.

VERSUS

STATE OF GUJARAT & ORS.

Appearance:

MRS KETTY A MEHTA for the Petitioners

MR HL JANI for the Respondent No.1 & 2

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/04/97

ORAL JUDGMENT

#. The petitioners prayed for quashing and setting aside of the order of the Deputy Collector, Valsad, dated 21st August 1984, Annexure 'F', and for further directions to the said authority to grant extension of time to the petitioners for reasonable period during which they can get non agricultural permission from the District

Development Officer and start work of construction on the land in dispute.

#. The dispute pertains to the agricultural land of Revenue Survey Numbers 16/1, 16/2 and 16/3 of village Mogarwadi and Revenue Survey No.13 of village Pardi-Sandhpur. The petitioners No.1 and 2 purchased the land in dispute from petitioner No.3. These lands were agricultural lands and an application was made before the Deputy Collector, Valsad, under Section 63 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as 'Act'), for necessary permission to sale the land. The necessary permission for sale of the land was granted by the Deputy Collector, Valsad, under Section 63 of the Act read with Rule 36 of the Bombay Tenancy and Agricultural Lands Rules, on condition, interalia that the sale deed should be executed and got registered within six months and permission for non agricultural use should be obtained from the competent officer before starting the use of the land for non agricultural purposes. The petitioners No.1 and 2 purchased this land to build houses on the said land by forming a cooperative housing society and as such they submitted an application on 18th September 1973 to the District Development Officer, Valsad, for giving them necessary permission for non agricultural use of the land under the provisions of the Act. The non agricultural use of the said land was prayed for the purpose of building houses. The application aforesaid was not decided by the concerned authority expeditiously and the period for starting non agricultural use as a condition of permission under Section 63 of the Act came to an end. The petitioners No.1 and 2, by their application dated 29th March 1974 made a request for extending the period mentioned in the order of permission of sale granted under the aforesaid Section. The Deputy Collector, Valsad, vide its order dated 13th April 1976, declined to grant the application of petitioners No.1 and 2 on the ground that they had failed to put land to non agricultural use. On the other hand, the District Development Officer has intimated under the letter dated 2nd March 1976, that the Assistant Collector, Valsad had not extended time beyond March 31 1974 in the permission granted under Section 63 of the Act, and hence the application cannot be granted. It has further been mentioned in the said letter that in case extension is granted in future, the petitioners' application for non agricultural use under the Act will be reconsidered. The petitioners thereupon preferred Revision Application No.TEN.53/76 before the Gujarat Revenue Tribunal against the order of the Deputy Collector dated April 13 1976 rejecting the request for

extension of time which was one of the conditions in the permission granted under Section 63 of the Act. The said Revision Application came to be accepted under the order dated July 1, 1977, and the aforesaid order of the Deputy Collector was set aside and the matter was remanded to him for deciding the application of the petitioner dated 29th March 1974 and subsequent application for extension of time dated 29th March 1976 after giving opportunity of hearing to them. The Tribunal has further directed to the Deputy Collector that he may decide from the circumstances of the case as to whether it was a fit case where he should move the government to extend the period of five years, during which the Deputy collector can extend time from time to time as initial permission was dated August 21, 1970 and the period of five years came to an end on August 20, 1975. The Deputy Collector thereupon issued a notice of hearing on August 29, 1977. The petitioners appeared before him and submitted written statement dated November 21, 1977. The petitioners pointed out to the Deputy Collector that the concerned lands were already permitted to be converted into non agricultural use and that the District Development Officer refused to give non agricultural permission unless the time given in permission under Section 63 of the Act is extended by the Deputy Collector. Prayer has been made for extension of time upto December 31, 1979. This application came to be dismissed under the order dated 11.4.79 on the ground that the period of five years had already expired and that the Collector cannot extend the time beyond the period of five years. The petitioners thereupon preferred Revision Application No.TEN.B.F.40 of 1980 before the Gujarat Revenue Tribunal. This Revision Application came to be decided by the Tribunal and the order dated 11th April was set aside. However, the Tribunal was of the view that as the petitioners have not preferred any Revision application against the Deputy Collector's order dated 21st April 1979, the said order cannot be set aside. The petitioners have come to know about this order of Deputy Collector dated 21st April 1979 only when they inspected record of the case produced in Revision Application No.40/80 before Gujarat Revenue Tribunal. The petitioners then preferred Revision Application No.TEN.B.S. 109/80 against the order dated 21.4.79. That Revision Application came to be allowed by the Tribunal under its order dated 16th February 1981 and the matter was remanded back to the Deputy Collector for fresh hearing and for considering the case of the petitioners on merits in the light of observations made by it in its earlier judgment dated 1st July 1977 as well as the judgment under reference. The Deputy Collector,

Valsad, under its order dated 30th March 1981, rejected the application of petitioners for extension of time. Then again the petitioners have preferred revision application No.279 of 1982 which came to be accepted under the order dated 5th March 1984 and the matter was remanded back for deciding the matter after hearing the petitioners. The petitioners, in the meanwhile applied to the Revenue Department, State of Gujarat, by application dated 18th July 1984, requesting the Government to call for papers pending before the Deputy Collector, Valsad, in its suo-motu powers of revision and grant time for putting the land to non agricultural use beyond the period of five years from the date of permission under Section 63 of the Act. However, by letter dated July 26, 1984, the Section Officer, Revenue Department, informed the petitioners that the Deputy Collector is exercising the powers under the provisions of the Bombay Tenancy and Agricultural Lands Act and the Government cannot interfere with its order and if the petitioners are not satisfied they can prefer legal remedies and nothing can be done by the Revenue Department. Then the petitioners have approached the Deputy Collector, who under its order dated 21st August 1984 held that the condition regarding time given in the permission under Section 63 of the Act cannot be extended, as earlier it was extended from time to time and beyond five years the Deputy Collector has no power to extend the time. So the application stood rejected. The petitioners preferred Revision Application before the Special Secretary, Revenue Department, State of Gujarat, against the aforesaid order of the Deputy Collector and further prayed for extension of time beyond a period of five years as the Government had power to extend time beyond five years in case of permission under Section 63 of the said Act. Reply has been sent under the letter dated 13th October 1984 by the Government that it has no jurisdiction in the matter and they were advised to take recourse to legal remedies in the appropriate Court. Hence this Special Civil Application before this Court.

#. The respondents have not filed any reply to the Special Civil Application. Heard learned counsel for the parties. This Special Civil Application has a checkered history and it exhibits how the officers of Government takes the matter of the citizens. The petitioners were made shuttle cock by the authorities. The Deputy Collector has not taken a pragmatic approach in the matter and similarly the other authorities have also not taken practical approach. They have proceeded technically which resulted in litigation after litigation and the five years' period had expired. It is true that

under the relevant provisions, the Deputy Collector may not have power to extend period beyond period of five years, but the petitioners having this difficulty in their way, have approached to the State government, but curiously enough, the State Government had 'hands up' in the matter forgetting that it is a "welfare State" and it is concerned with the rights of the citizens and as such it could not have proceeded technically when the petitioners approached it for the second time when five years' period had expired and that period could have been extended only with the sanction of the Government. In such circumstances, it could have been correct approach on the part of the Government to compel the petitioners to again go before the Tribunal. The Deputy Collector, may not be competent to extend period and in these circumstances the only remedy left with the petitioners, was to approach the State Government. However, the Deputy Collector too, instead of rejecting the application on the ground that five years period has expired, should have referred the application to the Government for its sanction which has not been done in the present case. That course has to be adopted rather than to dismiss the application of petitioners for extension of time or permission in the facts and circumstances of the present case. So the matter was required to be taken up by the State Government either by reference from the Deputy Collector or by filing of the application by the petitioners. The matter was before the State Government and it was knowing well that the five year period has expired and the Deputy Collector may not be within its competence to extend the period, even it has rejected the application of the petitioners. This approach on the part of the officers of the "welfare State" is deprecated. That is the reason how people are compelled to act contrary to the provisions of law and Acts of the country. If a person wants to act strictly in compliance of the exact provisions of law, the officers of the State make it onerous and difficult for such persons to get orders from them. This is a case where nothing could have been attributed to the petitioners when permission for sale of the land has been granted subject to condition that the petitioners shall get the permission within stipulated period for non agricultural use from the authorities concerned. The petitioners have applied for permission but the authorities have not taken up the matter before the expiry of permission and the petitioners were left with no option except to approach the first authority for extension of time, but that authority on one ground or the other proceeded to reject the application and the petitioners were compelled to approach the Tribunal and

the matter has been remanded and re-remanded but still it has not taken any pragmatic approach which has resulted in expiry of five year period, and the authorities, as stated earlier, had hands up in the matter. The non agricultural permission was needed for construction of house. There is actual shortage of houses and therefore there is all possibility of construction of houses on the land in question by now by the petitioners. Though the petitioners would have been disentitled from getting any relief from this Court in case they had constructed houses without permission for non agricultural use, but in the facts and circumstances of the present case, the officers of the Revenue Department and the Secretariat are really responsible for this position. They are the persons responsible for these illegal activities on the part of the persons who are in dire necessity of shelter. Thousands of unauthorized constructions are being made because taking permission is very cumbersome, onerous and difficult. These officers have approached too technically in the matter. Law is also taking its own course which results in unauthorized constructions throughout the country. It is really shocking that Vastrapur area of Ahmedabad is a 'Village' though it is a jungle of grown up buildings. The State Government should take a practical approach, and make the laws liberal so that the citizens, instead of doing such illegal activities may get permissions easily, for construction of houses. If it is done, there may be a check on corruption also. It is not unknown to this Court that there are cases where permission for non agricultural use has been granted, construction of buildings have been carried out and thereafter the action has been taken for recalling the non agricultural use permission. There are cases where permissions are not being granted for years together and as such persons are compelled to act illegally. A broad spectrum of things has to be taken and laws should be enforced in such a manner so that people may get things done within a reasonable time and without there being any other considerations. Large number of plots are lying vacant in the Vastrapur or other villages in near vicinity of Ahmedabad and it is not unknown fact to the authorities also that those lands are to be put to use of construction of houses. But still the things are taken in their own ways. However, I am constrained to observe that the officers of the Government and the Municipal Corporation also prefer that people should act illegally as it is beneficial to them. If things are illegally done, they can take out something from the pockets of those persons, which otherwise may not be possible in case necessary permissions are granted for non

agricultural use and construction of buildings is carried out within reasonable time. However, this matter has to be decided on its own facts and if there is any fault, it certainly lies with the officers of the Government, particularly the officers sitting in the Secretariat. This Court cannot be oblivious of the situation created by the officers of the Department, and particularly the Secretariat.

#. In the result, this Special Civil Application succeeds in part. The matter is sent back to the Secretary of the Revenue Department to consider the prayer of petitioners for extension of time within which they have to take permission for non agricultural use. This sanction can only be given by the Government as five year period has already expired. It is expected from the authorities concerned to decide the matter by having practical approach. In case the sanction is not granted for extension of permission, a reasoned order, duly supported by grounds, should be made. In case the sanction for extension of time is granted, the concerned officer has to grant non agricultural permission and pass the order within the extended period. The concerned officer will not allow the time to expire. However, the petitioners should make the application immediately to the said officer. It should be made by registered post acknowledgment due as well as personally. The Special Civil Application and Rule stands disposed of in aforesaid terms. The State of Gujarat is directed to pay Rs.2,000/- to the petitioners by way of costs of this petition.

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